



**Director of Public Prosecution v Mwebia (Criminal Case
45 of 2017) [2023] KEHC 3338 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 45 OF 2017
TW CHERERE, J
APRIL 20, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

PETER MWEBIA ACCUSED

RULING

1. Peter Mwebia (Accused) is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge are that on June 8, 2017 at Kathiranga village, Githongo Location Abothuguchi West Division, Imenti Central Sub-County within Meru County murdered Diana Makandi
2. Accused denied committing the offence and the prosecution has called seven witnesses who have testified against him and closed its case on March 22, 2023.
3. At this stage, court is called upon to determine whether, based on the evidence adduced, the prosecution has established a prima facie case to warrant the Accused person to be placed on his defence to answer to the charge.
4. It is important to note that the burden of proof lies on the Prosecution throughout the trial to prove their case against the accused person. That burden does not shift to the accused person. This is so because the accused person's constitutionally guaranteed rights include the right to remain silent, the right to adduce and challenge evidence and the right not to give any incriminating evidence. However, at this stage, the prosecution is not expected to have proved their case against the accused person beyond reasonable doubt. The measure is for a prima facie case to be established.



5. Section 306 (1) of the *Criminal Procedure Code* provides that:

“When the evidence of the witnesses for the Prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of the several or any one of the several accused committed the offence shall, after hearing, if necessary any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.”

6. Having considered the testimonies of the seven prosecution witnesses, the question is whether the evidence tendered establishes a prima facie case against the accused, or whether the accused has a case to answer.

7. In *Republic v Abdi Ibrahim Owi* [2013] eKLR, the court defined a prima facie case as follows:

“‘Prima facie’ is a latin word defined by Black’s Law Dictionary 8th Edition as, “sufficient to establish a fact or raise presumption unless disapproved or rebutted”. ‘Prima facie’ is defined by the same dictionary as “the establishment of a legally required rebuttable presumption.”

8. A prima facie case is therefore established where the evidence tendered by the Prosecution is sufficient on its own for a court of law to return a guilty verdict even if the Accused opts to remain silent.

9. In *Ronald Nyaga Kiura v Republic*, the court held:

“It is important to note that at the close of the Prosecution, what is required in law at this stage is for the trial court to satisfy itself that a prima facie case has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*...”

10. None of the seven prosecution witnessed Accused stab the deceased. The evidence discloses that Accused was suspected to have stabbed the deceased only for the reason that he had allegedly been threatening to harm his ex-wife PW1 from who he had separated.

11. From the foregoing, I find that the court is likely to embarrass itself if it places Accused on his defence for the evidence on record is not sufficient to sustain a conviction in the event that he exercises his right to give no defence.

12. In *Sawe v Rep* [2003] KLR 364 the Court of Appeal held:

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

13. Consequently, under the Provisions of Section 306 (1) of the Criminal Procedure Code, Accused is hereby found not guilty and it is ordered that he be set at liberty unless otherwise lawfully held.

DATED THIS 20TH DAY OF APRIL, 2022.

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present



For the Accused - Mr. Munene Advocate

For the State - Ms. Rita (PC 1)

